



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

CCB/172828

PRELIMINARY RECITALS

Pursuant to a petition filed March 16, 2016, under Wis. Admin. Code, §HA 3.03(4), to review a decision by the Western Wisconsin Consortium to discontinue child care assistance, a hearing was held on May 11, 2016, at La Crosse, Wisconsin, with the parties appearing by telephone.

The issue for determination is whether petitioner should be considered a new applicant for child care.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED]
La Crosse County Dept. of Human Services
P.O. Box 4002
La Crosse, WI 54601

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Trempealeau County.
2. Petitioner resides with her husband and two children. The household was eligible for child care assistance for the two children until February 1, 2016.
3. The household was due to complete a six-month review by the end of January, 2016. Materials about the review were sent by the agency in November and December. By a notice dated January 19, 2016, the agency informed petitioner that child care would end at the end of the month

because the review was not completed. A notice dated January 25, 2016 informed her that the children's authorization was ending after January 30, 2016.

4. The six-month report form (SMRF) was not received by the agency. Petitioner faxed it, however, to the agency's central processing office on January 22, 2016.

DISCUSSION

A parent is eligible for child care services if she needs the care to attend Wisconsin Works (W-2) approved school, to work, or to participate in W-2 activities. Wis. Stat., §49.155(1m)(a). If both parents are in the household both must be working or attending W-2 activities. Wis. Admin. Code, §DCF 101.26(1).

A child care recipient must complete a review every six months. Wisconsin Shares Child Care Policy Subsidy Manual, §1.9.3. If the review is missed the case closes. If a case is closed for thirty days the person must reapply and eligibility can be backdated only to the first of the month of application. Manual, §1.3.7.

The agency must utilize gross income in determining financial eligibility. For a new applicant the income limit is 185% of the federal poverty level (FPL). For an ongoing case, the income limit is 200% of the FPL. Wis. Stat., §49.155(1m)(c); Manual, §1.5.1.1 and 1.5.1.2. §1.5.1.1 specifically says that the 185% limit is to be used for households that have been closed for more than one calendar month. This distinction is important for petitioner's case because, by her calculations, household income is between 185% and 200% of the FPL.

Petitioner testified that she faxed the SMRF to the agency on January 22, 2016. The SMRF was not found in the agency document record, and there is no record of the fax being sent (the bank from which petitioner sent the fax keeps records for only thirty days). Petitioner sent a copy of the SMRF with her appeal letter. It is dated and signed on January 22, and it includes copies of the most recent pay stubs that would have been received prior to January 22.

I cases such as this, I use a simple rule. If the petitioner can show with credibility that the document was sent, I will allow it. If she simply says that she sent it with no proof, I will not allow it. I follow this policy because I have seen enough cases in which documents were lost at the central filing office that it is always credible to me that such a document could be lost. It always is possible that the client faxed the document to the wrong number, but as a rule I give the benefit of the doubt to the client if she has credible proof that the document was sent.

I find that the document sent by petitioner with her appeal, combined with her sworn testimony, is credible proof that she faxed it to the central processing office. It is more likely that she faxed it than she did not.

I will order the agency to determine eligibility as an ongoing recipient retroactive to February 1, 2016 based upon her January 22, 2016 SMRF (which I assume the agency has in its possession because it would have been forwarded to the agency with petitioner's appeal letter). Petitioner should note that since it now is May the agency might request updated information or at least ask her to attest that financial circumstances have not changed since January, 2016.

CONCLUSIONS OF LAW

Petitioner faxed her SMRF to the agency prior to the end of her authorization period, and thus she should be considered an ongoing recipient upon the re-filing of the document.

THEREFORE, it is

ORDERED

That the matter be remanded to the agency with instructions to re-determine petitioner's child care eligibility as an ongoing recipient retroactive to February 1, 2016 based upon her January 22, 2016 SMRF, and to issue appropriate authorizations if the household was eligible. The agency shall do so within 10 days of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 16th day of May, 2016

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on May 16, 2016.

La Crosse County Department of Human Services
Child Care Benefits